

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
THEODORE W. AND MARY A. MANTHEI)

For Appellants: John E. Breckenridge
Attorney at Law

For Respondent: Crawford H. Thomas
Chief Counsel

Wilbur F. Lavelle
Tax Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Theodore W. and Mary A. Manthei against proposed assessments of additional personal income tax and penalties as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalty</u>
1955	\$1,002.47	\$
1956	2,108.82	527.21
1957	569.00	142.25
1958	875.81	218.95
1959	3,188.62	
1960	2,431.08	
1961	2,536.33	
1962	2,841.09	
1963	2,107.07	

The Franchise Tax Board has conceded that for purposes of the Personal Income Tax Law appellants Theodore W. and Mary A. Manthei were not residents of California prior to 1961, and this concession will be reflected in our order.

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Thus the remaining issue is whether the appellants were California residents from January 1, 1961, to December 31, 1963.

Appellants are natives of Michigan. In the mid-forties Mr. Manthei, who had suffered several severe attacks of pneumonia, was advised by his physician to spend the winter months in a more moderate climate. As a result of this advice, appellants thereafter have spent part of each year in California. Their stays in this state during the years 1946 through 1961 varied from 106 to 240 days per year. From 1946 to 1954 appellants spent approximately 39 percent of their time in California, as compared to approximately 57 percent in Michigan. During the years 1955 to 1960, a period originally included in the Franchise Tax Board's assessment, their California time increased to approximately 44 percent, while their Michigan time decreased to approximately 48 percent. In 1961, the first year in controversy, approximately 62 percent of appellants' time was spent in California, the remainder being spent in Michigan. For the years 1962 and 1963, appellants have not submitted any specific information concerning the number of days that they spent in this state.

During the periods when they were in Michigan, appellants lived in their two-story, nine-room house, built in 1940 at a cost of \$5,000. In 1946 appellants built a house in Lynwood, California, for rental purposes. Two years later they purchased twenty acres of land in Huntington Beach, California. A \$3,000 house located on this property served as appellants' California home until a larger, \$7,000 house was built.

Appellants are the parents of six children. During the early years of the Mantheis' travels between Michigan and California, the children accompanied their parents. However, the mid-school-year disruptions proved unsatisfactory and the choice was made to leave the children in California schools for the full school year. When appellants were away from California, Mrs. Manthei's parents, who resided in Desert Hot Springs, California, came to appellants' home in Huntington Beach to care for the children. California school records show attendance of the Mantheis' children from 1947 through 1963.

Appellants' principal source of income was from interests held in the Manthei Bros. Veneer Mill and the Soo Veneer Mill in Petoskey and Sault Sainte Marie, Michigan, respectively. Mr. Manthei participated in the organization of the former mill in 1934, and in the organization of the latter mill in 1952. Originally he was active in the management of these enterprises, but his duties had diminished over the years. On June 30, 1963, Mr. Manthei sold his 50 percent.

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interest in the Manthei Bros. Veneer Mill. However, he has retained throughout the years in controversy his 33 percent interest in \$oo Veneer Mill.

In California appellants' business interests have steadily increased. They have made investments in rental property which include residential dwellings, a motel, a lumber yard, and a wrecking yard. They also have partnership interests in a ready-mix concrete business and a trailer park, and are members of a joint venture engaged in investments in land and oil leases.

Appellants are voting members of Christ Lutheran Church, Boyne City, Michigan,, They have no official church membership in California, but rather attend various local churches when in this state. However, since 1946 appellants have contributed more to the California churches than to their church in Michigan.

Finally, appellants state that they vote, file their federal income tax returns, and own family cemetery lots in Michigan,

Nonresident personal income tax returns were filed by the Mantheis for the years under appeal,

Section 17014 of the Revenue and Taxation Code provides:

"Resident" includes: (a) Every individual who is in this State for other than temporary or transitory purpose.

Regulation 17014-17016(a), title 18, California Administrative Code, provides:

Who are Residents and Nonresidents.

* * * *

The purpose of this definition is to include in the category of individuals who are taxable upon their entire net income, regardless of whether derived from sources within or without the State, all individuals who are physically present in this State enjoying the benefit and protection of its laws and government, except individuals who are here temporarily....

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Regulation 17014-17016(b), title 18, California Administrative Code, provides:

... Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case....

* * *

The underlying theory of Sections 17014-17016 is that the state with which a person has the closest connection during the taxable year is the state of his residence.

The facts and circumstances of the instant case demonstrate that at some point prior to 1961 appellants established a closer connection with California than with Michigan. Over the period of 1946 to 1963 the Mantheis' yearly time in this state generally increased. Although only the period of 1961 to 1963 is in controversy, it is proper to consider previous years for evidence of an increasing pattern, (Appeal of Marcellus L. Joslyn, Cal. 'St. Bd. of Equal., Sept. 15, 1958.) In 1961 appellants spent a significant majority of their time in California, and absent contrary evidence it must be presumed that the increasing pattern continued through 1963.

Appellants' six children were left in California schools for the full school year. This is a significant connection with this state for the Mantheis. Perhaps the choice was influenced by the availability of Mrs. Manthei's parents to care for the children. But again, this availability of family in California demonstrates another close connection with this state,

Appellants' business activities in California have, like their time spent here, shown a steady increase. By 1961 the Mantheis had acquired a significant assortment of investments. In contrast, Mr. Manthei's business activity and ownership of property in Michigan decreased.

Undue weight is placed by appellants on the fact that they consider themselves to be Michigan domiciliaries. Even if this contention is assumed to be accurate, such status does not help appellants' position. Domicile and residence are two distinct concepts. In Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278 [41 Cal. Rptr. 673], the court states at page 285:

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... The purpose of the 1937 amendment was to insure that all those who are in California for other than a temporary or transitory purpose enjoying the benefits and protection of the state, should in return contribute to the support of the state. [Citation omitted] Under this definition, a person may be a resident for income tax purposes although domiciled elsewhere and vice versa.

The facts of appellants* voting and filing their federal income tax returns in Michigan may possibly be relevant for determining an individual's domicile, but are of little value for determining residence. (Whittell v. Franchise Tax Board, supra, 231 Cal. App. 2d 278 [41 Cal. Rptr. 673], at page 288; Cal. Admin. Code, tit. 18, reg. 17014-17016(f), subd. (1).)

We conclude that the Mantheis' presence in California during 1961 to 1963 was neither temporary nor transitory. This is clearly demonstrated by the amount of time appellants spent in this state, the presence of their children and other close relatives here, and their numerous California business activities. Consequently, for purposes of the Personal Income Tax Law appellants were residents of California from January 1, 1961, to December 31, 1963.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code that the action of the Franchise Tax Board on the protests of Theodore W. and Mary A. Manthei against proposed assessments of additional personal income tax and penalties in the amounts of \$1,002.47, \$2,636.03, \$711.25, \$1,094.76, \$3,188.62, and \$2,431.08, for the years 1955, 1956, 1957, 1958, 1959, and 1960, respectively, be and the same is hereby reversed in accordance with concessions by respondent, and that the action of the Franchise Tax Board on the protests of appellants against proposed assessments of additional personal income tax in the amounts of \$2,536.33, \$2,841.09, and \$2,107.00 for the years 1961, 1962, and 1963, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day
of January, 1968, by the State Board of Equalization.

Daniel Klein, Chairman
Frank R. Drake, Member
John W. Lynch, Member
Elliott H. Moore, Member
_____, Member

ATTEST: [Signature], Secretary